

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

NOV 1 1995

RECEIVED  
NOV 1 1995

In the Matter of )

LAMBDA COMMUNICATIONS, INC. )

RM No. 8708

Emergency Petition for )  
Rulemaking to Apply Expanded )  
Interconnection Obligations )  
to the Puerto Rico Telephone )  
Company )

DOCKET FILE COPY ORIGINAL

COMMENTS ON PETITION FOR RULEMAKING

PUERTO RICO TELEPHONE COMPANY

Joe D. Edge  
Mark F. Dever

DRINKER BIDDLE & REATH  
901 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 842-8800

Its Attorneys

November 22, 1995

No. of Copies rec'd  
List ABCDE

CH 10

### SUMMARY

The Commission should decline to begin a rulemaking proceeding to revise its expanded interconnection policies as they apply to one company — PRTC. PRTC is realizing dramatic improvements in telephone service penetration in Puerto Rico and continues to extend and enhance its network to serve all of the people of the island. Turning its efforts back to urban high volume customers with the advent of expanded interconnection will weaken PRTC's efforts to offer telephone service to currently unserved groups. Since interstate competitive access service providers are unlikely to build networks in low-volume or unserved areas, those unserved groups will be lost in the struggle for interstate high volume revenues.

Indeed, the Commission considered these and other points in connection with its 1992 decision to exempt PRTC from the requirements of expanded interconnection. The same factors supporting the Commission's decision then are pertinent today. Moreover, Congress is finalizing legislation that will require the Commission to begin a number of rulemaking proceedings, including proceedings to address comprehensive new interconnection standards, interconnection waiver conditions, and rules governing the intersection of federal and state interconnection regulation. The Commission should decline to begin a PRTC-specific rulemaking proceeding on the threshold of a vast new national regulatory design.

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY . . . . .	i
I. INTRODUCTION . . . . .	1
II. PRTC IS WORKING TO IMPROVE PUERTO RICO'S HISTORICALLY LOW TELEPHONE SERVICE PENETRATION . . . . .	4
III. THE COMMISSION EXEMPTED PRTC FROM ITS INTERCONNECTION POLICY FOR GOOD AND SUFFICIENT REASONS . . . . .	7
IV. PENDING FEDERAL TELECOMMUNICATIONS LEGISLATION WILL SUBSTANTIALLY ALTER THE INTERCONNECTION LANDSCAPE . . . . .	9
V. CONCLUSION . . . . .	11

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
LAMBDA COMMUNICATIONS, INC.	)	RM No. 8708
	)	
Emergency Petition for	)	
Rulemaking to Apply Expanded	)	
Interconnection Obligations	)	
to the Puerto Rico Telephone	)	
Company	)	
To: The Commission		

**COMMENTS ON PETITION FOR RULEMAKING**

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.405(a) of the Commission's Rules, 47 C.F.R. § 1.405(a), submits these Comments on the Petition for Rulemaking filed on September 29, 1995 by Lambda Communications, Inc. ("Lambda").<sup>1</sup>

**I. INTRODUCTION**

PRTC is a wholly-owned subsidiary of the Puerto Rico Telephone Authority ("PRTA"), a government instrumentality of the Commonwealth of Puerto Rico.<sup>2</sup> PRTC provides wireline telephone service throughout the urban and rural areas of the island of Puerto Rico.

Lambda asks the Commission to begin a rulemaking proceeding to revisit its decision three years ago to exempt PRTC from

---

1. Public Notice, Doc. No. 60313 (Oct. 23, 1995).

2. Law Number 25 of the Commonwealth of Puerto Rico, approved May 6, 1974, established PRTA as a government corporation and provided for the purchase of PRTC by PRTA. 27 LPRA § 404.

expanded interconnection requirements. Lambda maintains that the Commission was wrong to exempt PRTC because, it argues, Puerto Rico is not a rural, sparsely populated island and PRTC is a modern, technologically-advanced local exchange carrier. Lambda also contends that it has repeatedly asked PRTC to provide expanded interconnection. Lambda Petition at 3, 4, 5, 6. In that regard, the facts of the matter are inconsistent with Lambda's claim.

Lambda did not ask PRTC for interconnection for interstate services until October 4, 1995 — five calendar days after it filed its Petition with the Commission. See Attachment 1.<sup>3</sup> Lambda's other interconnection requests have never implicated the Commission's expanded interconnection policies. For example, Lambda delivered a request to PRTC for interconnection for intrastate service (not interstate service subject to the jurisdiction of the Commission) on April 13, 1995. PRTC has not addressed Lambda's request for intrastate interconnection pending the outcome of proceedings to determine the legal status of intrastate competition.<sup>4</sup> Similarly, Lambda's parent corporation, Centennial Cellular Corporation, has requested interconnection

---

3. PRTC responded to this request by providing a copy of relevant interconnection tariff provisions, by seeking additional details regarding Lambda's request, by urging Lambda to submit a normal service order for interconnection services, and by promising to give prompt attention to Lambda's service requests. Lambda has not responded to PRTC's letter.

4. It is important to note that the local market structure in Puerto Rico is not germane to this request for rulemaking. The Puerto Rico legislature voted in 1974 to purchase PRTC and to reserve for it an exclusive franchise on the island.

for its personal communications service system. PRTC has responded to this request by tendering a proposed interconnection agreement. In short, Lambda's claim that PRTC repeatedly has denied expanded interconnection for interstate competitive access service is incorrect.

On the substance of matter, however, the Commission should decline to undertake a new PRTC-specific rulemaking to revise its expanded interconnection rules. PRTC is continuing to improve dramatically Puerto Rico's historically low telephone service penetration so that the island's citizens enjoy the same level of telephone service that is available in the mainland United States. Responding to requests for expanded interconnection will necessitate that PRTC direct its efforts to urban high volume customers and will compromise PRTC's efforts to improve service throughout the island. Moreover, the underpinnings of the Commission's decision to exempt PRTC from expanded interconnection requirements have not changed in the three years since the Commission examined the issue in its expanded interconnection proceeding. Most importantly, the Commission should not undertake to review its expanded interconnection policies as they apply specifically to PRTC as Congress is finalizing legislation that will substantially alter the national interconnection landscape. For all of these reasons, the Commission should deny Lambda's Petition for Rulemaking.

## **II. PRTC IS WORKING TO IMPROVE PUERTO RICO'S HISTORICALLY LOW TELEPHONE SERVICE PENETRATION**

The Commonwealth of Puerto Rico acquired PRTC in 1974 to improve the unacceptable level of telephone service development on the island. Telephone service penetration in Puerto Rico was barely at 25 percent in 1974. In the same year, penetration in the mainland United States was at 90 percent.

Since 1974, PRTC has made great strides in extending telephone service throughout Puerto Rico and modern facilities are now widely available. Last year alone, PRTC increased penetration by 4 percent and a similar increase should be achieved this year.<sup>5</sup> Nevertheless, telephone penetration in Puerto Rico remains low by United States standards. United States telephone penetration is now 93.8 percent nationally,<sup>6</sup> while overall penetration in Puerto Rico is 71 percent and below 50 percent in some areas of the island. In contrast, United States telephone penetration passed the 70 percent mark in 1955.<sup>7</sup> The map enclosed as Attachment 2 shows the percentage of

---

5. Thus, PRTC accomplished in one year the same percentage increase in penetration that took twenty years to accomplish in the mainland United States.

6. Federal-State Joint Board Staff, Monitoring Report, CC Docket No. 87-339, Table 1.2 at 27 (May 1995) ("1995 Monitoring Report"). Only three states have penetration rates below 90 percent: Mississippi, 88.6 percent; New Mexico, 88.3 percent; and South Carolina, 89.4 percent. Id.

7. 2 Bureau of the Census, United States Department of Commerce, Historical Statistics for the United States from Colonial Times to 1970, at 783 (1975).

households in each of Puerto Rico's exchange areas having a telephone as of December 1994.<sup>8</sup>

Since the advent of expanded interconnection, PRTC has increased telephone service penetration in Puerto Rico from 64.3 percent in December 1992 to 71 percent in December 1994 (an improvement of 6.7 percentage points). For the same period, penetration in the United States remained unchanged at 93.8 percent. Indeed, PRTC has increased telephone service penetration in Puerto Rico from 47.1 percent in December 1984 to 71 percent in December 1994 (an improvement of 23.9 percentage points). For the same period, United States penetration increased from 91.6 percent to 93.8 percent (an improvement of just 2.2 percentage points). See Attachment 3. Notably, the increase in Puerto Rico service penetration has been achieved without an increase in local rates.<sup>9</sup> At the current rate of increase, however, it will still be several years before PRTC reaches a penetration level comparable to that of the lowest-penetration states.

---

8. PRTC has two study areas — one with approximately 130,000 lines and one with approximately 900,000 lines. (The smaller study area includes the municipalities of Aibonito, Aguas Buenas, Caguas, Cayey, Cidra, Culebra, Guaynabo, Gurabo, Juncos, Las Piedras, San Lorenzo, and Vieques. The larger study area includes all other municipalities in Puerto Rico.) In December 1994, penetration varied by exchange area from 53 percent to 88.8 percent in the smaller area and from 45.6 percent to 89.6 percent in the larger study area.

9. Not only are rates stable but PRTC absorbs 60¢ of the monthly subscriber line charge for each customer.



Because PRTC is government-owned and does not pay dividends, it has been able to reinvest its after tax earnings in network extension and modernization. Addressing expanded interconnection during this period of network improvement, however, will likely slow the growth in telephone subscribership. Competition for PRTC's largest customers will reduce or eliminate the funds available for network extension and transfer a heavier burden to residential customers. Concomitant increases in local service rates will drive existing subscribers off of the network and deter new subscribers from signing on.

Although PRTC has made substantial progress, a great deal remains to be done before Puerto Rico achieves penetration levels comparable to the United States mainland. In that regard, the revenue from all of PRTC's services is critical to support the investment needed to realize universal service. Lambda's provision of interstate competitive access service, however, will take much needed funding away from PRTC's service expansion effort. Since Lambda is unlikely to build a local network in any areas not already served, Lambda will not return that revenue to the currently unserved areas of Puerto Rico as does PRTC. Funds will be taken away from PRTC's universal service effort with no corresponding investment by Lambda in extending the infrastructure of the island to unserved customers and developing service alternatives for residential and small business customers. In short, expanded interconnection has the potential

to retard the effort to bring telephone service penetration in Puerto Rico into line with United States norms.

**III. THE COMMISSION EXEMPTED PRTC FROM ITS INTERCONNECTION POLICY FOR GOOD AND SUFFICIENT REASONS**

The Commission expressly exempted PRTC from the requirements of expanded interconnection when it adopted the expanded interconnection policy in 1992. Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7398 (1992) ("Expanded Interconnection Order"). The same factors underlying the Commission's decision in 1992 are pertinent today.

In its 1991 comments on the Commission's expanded interconnection proposals, PRTC demonstrated that expanded interconnection should not be applied in Puerto Rico for two distinct reasons. First, PRTC detailed the effect expanded interconnection would have on NECA pool members. Expanded Interconnection with Local Telephone Company Facilities, Comments of the Puerto Rico Telephone Company at 2-4 (filed Aug. 6, 1991) ("PRTC Comments"). Among other things, NECA pool members do not have the pricing flexibility needed effectively to meet the access competition envisioned by expanded interconnection. Id. at 3. Moreover, PRTC demonstrated that lower demand for access services would force a rise in the pool's access rates, which would benefit less efficient competitive access providers. Id. at 3-4. In short, expanded interconnection is at odds with NECA pool membership.

In addition, PRTC detailed the unique circumstances with which it is faced as a government-owned local exchange carrier in an area of lower telephone service penetration. Id. at 5-7. PRTC's mission is to raise telephone service penetration to levels comparable to those in the mainland United States.<sup>10</sup> At the same time, however, Puerto Rico's per capita income is substantially lower than the United States average and unemployment on the island is substantially higher.<sup>11</sup> PRTC Comments at 5.

---

10. Lambda charges that PRTC has portrayed Puerto Rico as overwhelmingly rural and suggests that this argument contributed to the Commission's 1992 decision to exempt PRTC from the requirements of expanded interconnection. Indeed, Lambda invests four pages of its Petition in arguing that Puerto Rico is not a rural area. See Lambda Petition at 11-14. In connection with the expanded interconnection debate, however, PRTC has never asserted that Puerto Rico is mostly a rural area and the Commission nowhere cites such an argument in support of its 1992 decision. See Expanded Interconnection Order, 7 FCC Rcd at 7398-99. In fact, most of the land area of Puerto Rico is characterized by rural and mountainous tracts that are very expensive to serve.

11. Lambda relates that "Puerto Rico's reported low per capita income relative to the states is very misleading" and suggests the existence of a "vigorous underground economy." Lambda Petition at 13. If Lambda's point is to suggest that Puerto Rico is better off than is apparent from its per capita income levels, Lambda misses the mark. Puerto Rico's official economic statistics are assembled and reported in the same way as in other areas of the United States. By any measure, personal income on the island is far below United States levels and a far larger proportion of the population lives below the poverty line. In any event, "vigorous underground economies" are a fact of life across the country and should not factor into an analysis of Puerto Rico's market size any more than they do when discussing New York or Los Angeles.

Against this background, the Commission excluded PRTC from the requirements of its expanded interconnection policy.<sup>12</sup> Lambda charges that the Commission's decision "was based on the absence of vigorous opposition to PRTC's requested exclusion at the time rather than on a reasoned analysis based on the record." Lambda Petition at 3. In other words, Lambda implies that the Commission's decision was not adequately justified.<sup>13</sup> To the contrary, the Commission possessed sufficient information on which to base a decision, and the underpinnings of that determination are no less compelling today than they were during the expanded interconnection rulemaking.

**IV. PENDING FEDERAL TELECOMMUNICATIONS LEGISLATION WILL SUBSTANTIALLY ALTER THE INTERCONNECTION LANDSCAPE**

Finally, the Commission should decline to begin a rulemaking to amend its expanded interconnection rules as they apply only to a single company just as Congress is finalizing legislation that will substantially alter the telecommunications landscape. In general, legislation currently being conformed by a House-Senate

---

12. Lambda writes that the "Commission simply appeared to assume that no dire consequences at that time would materialize from its decision to permit PRTC to continue to align itself with the much smaller NECA pool members . . . ." Lambda Petition at 8. Plainly, the Commission has no authority to dictate who may participate in the NECA pool and who may not. In any event, it is worth noting that Lambda's parent, Centennial Cellular Corporation, is partly owned by Citizen's Utilities Company, which holds interests in several NECA pool members.

13. If Lambda is suggesting that the Commission somehow ignored the terms of the Administrative Procedure Act in adopting its expanded interconnection rules, Lambda needed to have raised its point before the Commission or a federal court nearly three years ago.

Conference Committee will direct the Commission to undertake a broad array of rulemaking and administrative proceedings. More specifically, the emerging legislation establishes comprehensive interconnection standards, interconnection waiver conditions, and requirements for federal and state regulatory action. The provisions of each of the bills being conformed in Conference are of such breadth and scope as to render meaningless any PRTC-specific rulemaking now undertaken by the Commission.

For example, S. 652 institutes broad interconnection requirements for local exchange carriers and details comprehensive standards for interconnection agreements reached under the terms of the bill. S. 652, 104th Cong., 1st Sess. § 101 (1995). Most importantly, S. 652 directs the Commission to promulgate rules to implement the requirements of the bill within six months of enactment. That mandate includes a directive to the Commission to waive or consider waiving the provisions of the interconnection regime under certain circumstances. Id.


Similarly, H.R. 1555 sets minimum standards for the terms and conditions of interconnection agreements and directs the Commission to establish implementing regulations within six months of enactment of the bill and after consultation with a Joint Board. H.R. 1555, 104th Cong., 1st Sess. § 101 (1995). H.R. 1555 also contains provisions for waiver of its terms by the Commission and provides for state review and enforcement of interconnection contracts. Id.

In short, enactment of pending federal telecommunications legislation will dramatically alter the national telecommunications landscape in general and local exchange interconnection policies in particular. The Commission will be required to promulgate rules to implement this nationwide interconnection regime. On the threshold of a new regulatory scheme, the Commission should decline to begin a rulemaking to alter its existing regulations as they apply to one company.

V. CONCLUSION

For these reasons, the Commission should deny Lambda's Petition for Rulemaking.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Joe D. Edge", is written over a horizontal line.

Joe D. Edge  
Mark F. Dever  
DRINKER BIDDLE & REATH  
901 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 842-8800

Attorneys for

PUERTO RICO TELEPHONE COMPANY

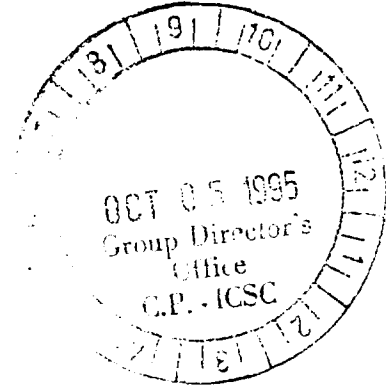
November 22, 1995

**ATTACHMENT 1**



October 4, 1995

Maria M. Reyes-Guevara, Esq.  
Puerto Rico Telephone Company  
1515 Roosevelt Ave. - 4th Floor  
Caparra Heights, PR 00936-0998



Dear Ms. Reyes:

By my letter to you dated April 13, 1995, Lambda Communications, Inc. ("Lambda") formally requested "a Point of Interconnection ("POI") to the PRTC Tandem located at 1513 Roosevelt Ave., Caparra Heights, Guaynabo, P.R.". By letter dated May 12, 1995, Ms. Gladys Batista Torres informed me that PRTC would not consider Lambda's request. This denial was based on two erroneous beliefs. First, PRTC incorrectly believed that Lambda's interconnection request was based on its December 2, 1994 authorization from the Puerto Rico Public Service Commission ("PRPSC") to provide certain intra-island telecommunications services. Second, PRTC incorrectly believed that the December 2, 1994 authorization was stayed by a PRPSC Administrative Order dated April 27, 1995.

As you know, Lambda currently requires interconnection with PRTC only for its interstate access services which it will provide pursuant to federal authority. Thus, the December 2, 1994 authorization - which was never held in abeyance by the PRPSC - is not relevant to Lambda's interconnection request. As you also know, PRTC's obligation to provide interconnection to Lambda for purposes of providing interstate telecommunications services is federally mandated and wholly unrelated to any matters concerning Lambda's intra-island operations.

In view of the foregoing and the unnecessary delays already experienced, time is of the essence. Lambda would rather obtain its requested interconnection with PRTC's network through negotiations rather than seeking formal federal enforcement of PRTC's interconnection obligations. Thus, Lambda renews its request for interconnection at the PRTC Tandem located at 1513 Roosevelt Ave., Caparra Heights, Guaynabo, P.R. for purposes of providing interstate access and transport telecommunications services. To this end, Lambda requests a written response to this request by no later than October 18, 1995.

Please also note our change of address.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Braden". Below the signature is a small, stylized circular mark containing the letters "aa".

Robert E. Braden  
Vice President Operations

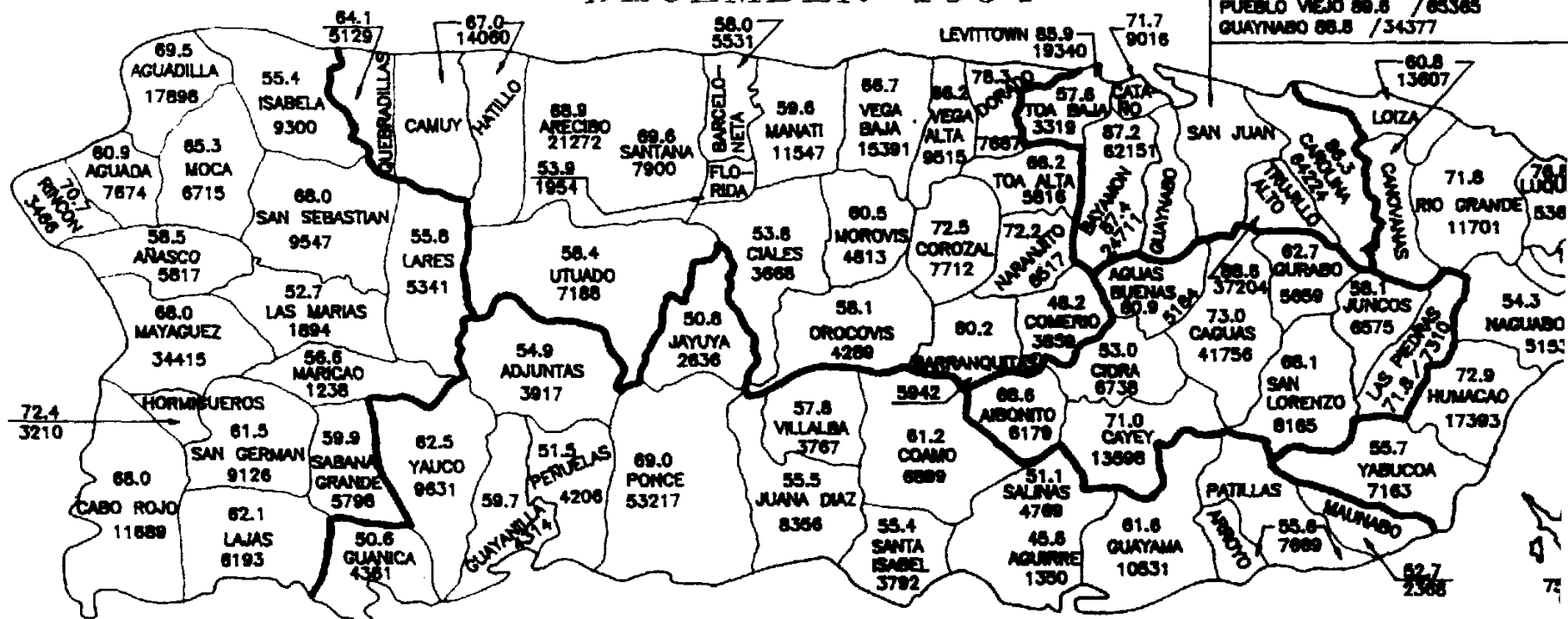
cc: Rudy Graf

REB/aa



**ATTACHMENT 2**

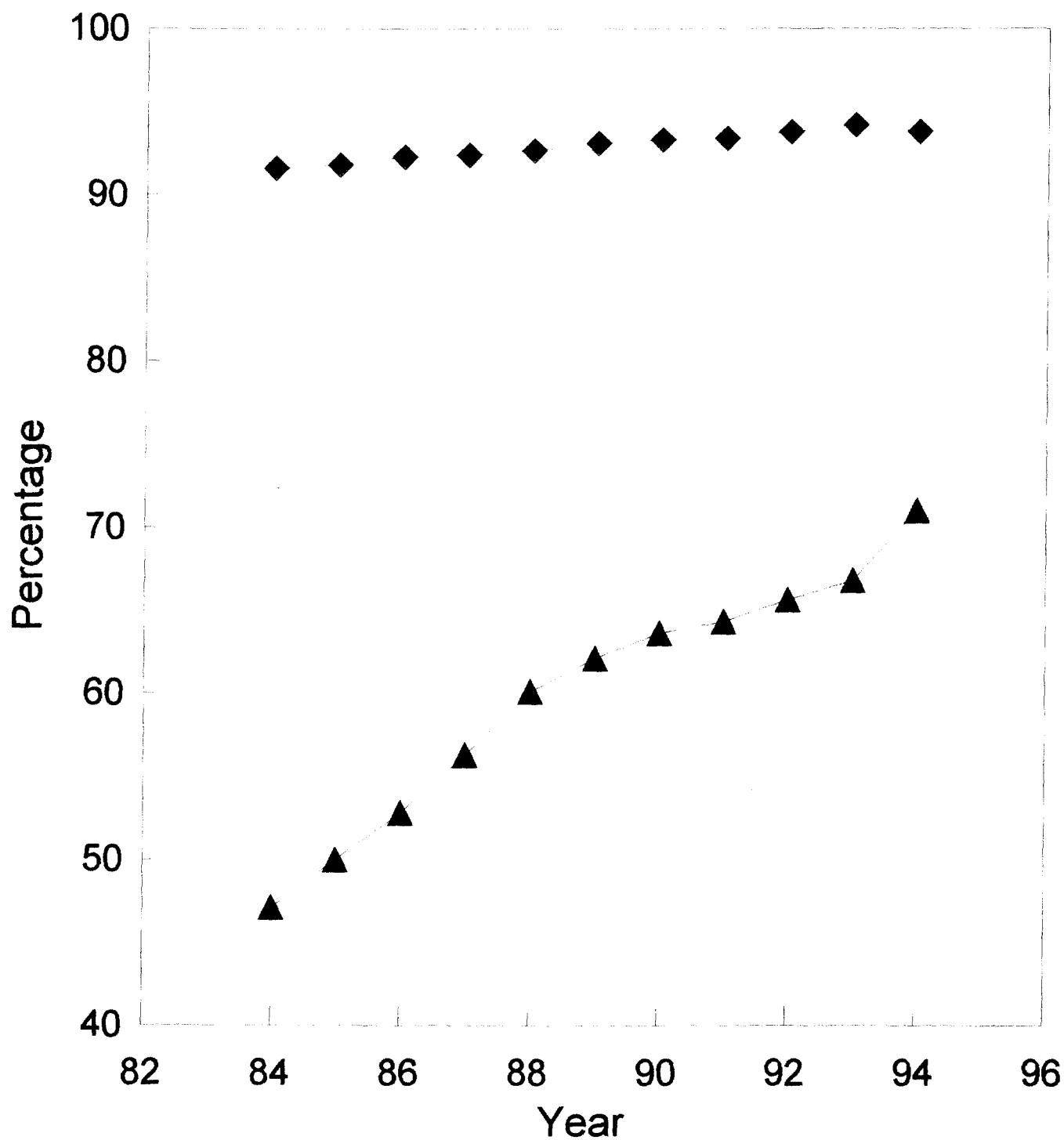
SANTURCE ESTE 89.4 / 28427  
SANTURCE OESTE 77.2 / 47638  
HATO REY-RIO PIEDRAS 81.4 / 112322  
ISLA VERDE 84.3 / 11085  
PUEBLO VIEJO 89.8 / 65365  
GUAYNABO 88.8 / 34377



99.9 = %  
EXCHANGE NAME  
999,999 = TOTAL LINES IN SERVICE \*  
\* = CELLULAR, PAGING, BEEPERS AND  
SPECIAL FACILITIES NOT INCLUDED.

**ATTACHMENT 3**

# Telephone Service Penetration



◆ U.S.


▲ Puerto Rico

**CERTIFICATE OF SERVICE**

I, Donna Wenit, hereby certify that the foregoing Comments on Petition for Rulemaking and the accompanying attachments were delivered by hand to the following on November 22, 1995:

Richard Rubin  
Mitchell F. Brecher  
Fleischman and Walsh, L.L.P.  
1400 Sixteenth Street, N.W.  
Suite 600  
Washington, D.C. 20036

Attorneys for  
Lambda Communications, Inc.

  
\_\_\_\_\_  
Donna Wenit